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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 615

GRANT V. KAVANAGH,
APPELLANT,

v.

ROBERT B. STENHOUSE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND AFFIRM

ARAM K. BERBERIAN
PONTARELLI & BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant

Blanchard Printing Company, Boston, Mass. — Law Printers

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Appellant, Grant v. Kavanagh, pursuant to Rule 16-3 opposes Appellee's Motion to Dismiss the Appellant's Appeal and to affirm the judgment of the state courts on the following grounds:

1. Notwithstanding Appellee's allegation to the contrary, Appellant set forth on page 4 of his Jurisdictional Statement, Statement of the Case, the particular stage during the proceedings in the trial court where the federal questions were raised. There, Appellant stated:

> "At the close of the testimony Kavanagh moved in writing for a directed verdict on the ground that G. L. 1956, 12-7-1 contravened the Due Process Clause of the federal constitution and the statute could not validly be the basis of any defense. Upon the denial thereof Kavanagh requested that the court instruct the jury as to the common law of arrest and arraignment stating to the court the Due Process Clause of the federal constitution required such standards.

2. Notwithstanding Appellee's statement to the contrary, Appellant stated in his Brief the stage at which and the method by which he raised in the state appellate court the federal questions involved. Appellant stated in page 5 of the Jurisdictional Statement as follows:

> "Appellant prosecuted his exceptions to all adverse trial court rulings to the Rhode Island Supreme Court. There he contended that G. L. 1956, 12-7-1 violated both the Rhode Island and the Federal constitutional provisions."

3. Notwithstanding Appellee's averment that the Supreme Court of the State of Rhode Island did not pass upon any federal question presented by Appellant therein, that court specifically adverted to Appellant's contentions (see page 11 of Jurisdictional Statement), incorporated by reference the decision of the Supreme Court of Delaware on the due process point (see page 14 Jurisdictional Statement) and over-ruled all Appellant's exceptions thereon (see page 18 Jurisdictional Statement).

4. Notwithstanding Appellee's allegation to the contrary, Appellant set forth in his Jurisdictional Statement the methods and means by which he raised the federal constitutional questions (see paragraphs 1, 2 and 3, supra).

5. Notwithstanding Appellee's statement to the contrary, Appellant directly challenged G. L. 1956, 12-7-1 as being repugnant to Article XIV, Section 1 of the Amendments to the United States Constitution.

6. It is true that the Rhode Island Supreme Court adverted to Rhode Island constitutional provisions as well as federal constitutional provisions to support its decision. But the mere fact that a statute is not repugnant to the state constitution does not obviate its repugnancy to the federal constitution.

Respectfully submitted,

ARAM K. BERBERIAN
PONTARELLI & BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant